

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 2.59.1501 pertaining	)	ON PROPOSED AMENDMENT
to definitions and ARM 2.59.1502	)	AND ADOPTION
pertaining to application procedure	)	
required to engage in deposit lending,	)	
and the proposed adoption of NEW	)	
RULE I pertaining to reports, NEW	)	
RULE II pertaining to schedule of charges,	)	
NEW RULE III pertaining to employees'	)	
character and fitness, NEW RULE IV	)	
pertaining to electronic deductions, and	)	
NEW RULE V pertaining to income	)	
verification	)	

TO: All Concerned Persons

1. On March 22, 2006, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on March 17, 2006, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

2.59.1501 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Fraud or financial dishonesty or civil judgments involving fraudulent or dishonest financial dealings" means embezzlement, money laundering, identity theft, theft, and other financial related crimes and judgments.

(4) "Monthly net income" means gross salary minus taxes and voluntary deductions. This term includes income from public assistance, child support, alimony, unemployment insurance payments, and workers' compensation.

AUTH: 31-1-702, MCA

IMP: 31-1-705, 31-1-722, MCA

2.59.1502 APPLICATION PROCEDURE REQUIRED TO ENGAGE IN DEPOSIT LENDING (1) through (3) remain the same.

(4) Except for those entities listed in (5), all persons or lenders must obtain a license under this rule in order to issue deferred deposit loans. Persons or lenders that are licensed under the Consumer Loan Act, 32-5-101, MCA, and the Title Loan Act, 31-1-801, MCA, are not exempt from the licensing requirements of 31-1-701, MCA.

(5) The following are exempt from the licensing requirements:

(a) federal and state chartered banks;

(b) federal and state chartered savings and loans;

(c) federal and state credit unions;

(d) trust companies; and

(e) investment companies.

AUTH: 31-1-702, MCA

IMP: 31-1-705, 31-1-722, MCA

REASON: The Montana Legislature enacted House Bill 526 in 1999, which created the Montana Deferred Deposit Loan Act. This Act has been codified in Title 32, chapter 1, part 7, MCA. Section 31-1-702, MCA allows the Department to adopt rules to implement the provisions of the Act. ARM 2.59.1501 is being amended to provide definitions for specific terms used throughout the proposed rules. ARM 2.59.1502 is being amended to clarify which regulated entities are exempt from the licensing provisions of the Montana Deferred Deposit Loan Act. The Division does not anticipate any financial impact from the proposed rules. There are currently 106 deferred deposit loan licensees.

4. The proposed new rules provide as follows:

NEW RULE I REPORTS (1) The following must be reported to the department:

(a) any instances of theft or missing funds within ten days of each occurrence;

(b) any change in managers within ten days of each occurrence; and

(c) all officer questionnaires must be answered within ten days of the end of any examination.

AUTH: 31-1-702, MCA

IMP: 31-1-702, MCA

NEW RULE II SCHEDULE OF CHARGES (1) Every licensee under the Montana Deferred Deposit Loan Act shall file with the commissioner in duplicate, at the time of filing application for such license or license renewal, a full and accurate schedule of all charges, fees, and costs as follows:

(a) interest rate;

- (b) nonsufficient fund fees; and
  - (c) examples of typical loan amounts including principal, interest, and fees.
- (2) Licensees shall display such schedule prominently in each licensed place of business where loans are made or negotiated so as to be easily readable by borrowers and prospective borrowers.

AUTH: 31-1-702, MCA

IMP: 31-1-721, MCA

NEW RULE III EMPLOYEES' CHARACTER AND FITNESS (1) Licensees are responsible for conducting appropriate background checks on all applicants for employment. At a minimum, each licensee shall:

- (a) require completion of employee criminal background questionnaire;
- (b) verify and document employment and personal references; and
- (c) within ten days of start of employment, request a Montana criminal records check from the Department of Justice.

(2) If the background check demonstrates any criminal convictions involving fraud or financial dishonesty or civil judgments involving fraudulent or dishonest financial dealings, the licensee cannot employ such person, or if already employed, must terminate employment.

(3) Verification of compliance with this rule shall occur during annual exams. Licensees are required to keep accurate employment records on each employee to ensure that the department is able to verify compliance.

AUTH: 31-1-702, MCA

IMP: 31-1-705, MCA

NEW RULE IV ELECTRONIC DEDUCTIONS (1) An electronic deduction for nonsufficient funds may be authorized by the borrower only on the original loan agreement.

(2) An electronic deduction for nonsufficient funds shall be separate and apart from an electronic deduction for the amount of the loan, interest, or any fees.

(3) An electronic deduction for nonsufficient funds authorized by the borrower under (1) may not be presented to the borrower's financial institution until the licensee has presented the check for payment at least twice.

AUTH: 31-1-702, MCA

IMP: 31-1-703, MCA

NEW RULE V INCOME VERIFICATION (1) Licensees shall verify a borrower's income prior to issuing any deferred deposit loan.

(2) Verification of income shall be in a form of most recent pay stubs for employment, or other official documents for public assistance, child support, alimony, unemployment insurance, and workers' compensation.

AUTH: 31-1-702, MCA

IMP: 31-1-722, MCA

REASON: The Montana Legislature enacted House Bill 526 in 1999, which created the Montana Deferred Deposit Loan Act. This Act has been codified in Title 32, chapter 1, part 7, MCA. Section 31-1-702, MCA allows the Department to adopt rules to implement the provisions of the Act. New Rules I and II are needed to clarify the specific reports and disclosures that deferred deposit loan licensees will be required to provide. New Rule III is needed to implement recent legislative enactment. New Rule IV is needed to clarify the procedures for utilizing electronic fund transfers for checks that are returned for nonsufficient funds. New Rule V is needed to clarify what is necessary in order to verify a borrower's income prior to issuing a deferred deposit loan. The Division does not anticipate any financial impact from the proposed rules. There are currently 106 deferred deposit loan licensees.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [mprichard@mt.gov](mailto:mprichard@mt.gov), and must be received no later than March 27, 2006.

6. Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Proposed Amendment and Adoption is available through the Department's site on the World Wide Web at <http://www.banking.mt.gov>, under "Administrative Rule Notices." The Department strives to make the electronic copy of this Notice of Proposed Amendment and Adoption conform to the official version of the Notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission or comments.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [cromano@mt.gov](mailto:cromano@mt.gov), or may be made by completing a

request form at any rules hearing held by the Division of Banking and Financial Institutions.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BY: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

BY: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

Certified to the Secretary of State February 13, 2006.